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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 434 of 1999**

1. Somnath Sahu son of Hirau Sahu, aged 21 years, resident of Khartora, Police Station Palari, District Raipur, MP (Now CG)

---- Appellant**Versus**

1. State of Madhya Pradesh (now Chhattisgarh) through Police Station, Palari, District Raipur (MP) (now CG)

---- Respondent

For Appellant	-	Dr. N.K. Shukla Sr. Advocate with Shri Vikram Sharma Advocate
For Respondent	-	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker**Judgment on Board****13/02/2017**

This appeal is directed against the judgment and order dated 12.11.1998 passed by Additional Sessions Judge & Special Judge Baloda Bazar, District Raipur, in Special Case No. 114/1996 convicting the accused/appellant under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the "NDPS Act") and sentencing him to undergo rigorous imprisonment for five years with fine of Rs. 25,000/-, plus default stipulation.

2. Facts of the case in brief are that on 28.8.1996 at 7:25 AM on the basis of secrete information the Police party raided the house of the accused/appellant and found 1 KG of *ganja* and Rs. 65 in cash from there during search. Secrete information was reduced



to writing vide Ex. D-1; it was forwarded to SDO (P) vide Ex. P-3; seizure was made vide Ex. P-5; *Dehati Nailisi* Ex. P-6 was recorded; Malkhana register Ex. P/4-A was seized; article so seized was sent for chemical examination from where the FSL report Ex. P-9 was received confirming the said article to be *ganja*; and FIR Ex. P-7 was registered against the accused/appellant under Section 20 of the NDPS Act. After completion of investigation, charge sheet was filed by the police for the said offence followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 08 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case. This apart, two witnesses namely Milaram Verma (DW-1) and Gambhir Das (DW-2) have also been examined by the defence in support of its case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the appellant submits as under:

(i) that there is total non compliance of Sections 55 and 57 of the NDPS Act and even section 42 has not been complied with in its entirety;

- (ii) that there is nothing on record to show that the sample of the contraband was taken and sealed in accordance with law, and that the weighment *Panchnama* was prepared;
- (iii) that there is no evidence to show that on sample being drawn, the remaining contraband was kept in *Maalkhana in safe custody*;
- (iv) that the prosecution has utterly failed to prove that the FSL report is in respect of the contraband said to have been seized from the appellant;
- (v) that at the same time apart from the accused/appellant, his family members have also been implicated and *ganja* is said to have been seized from them also; and
- (vi) that the accused/appellant has already remained in jail for about four years for no fault on his part.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 20 of the NDPS Act are strictly in accordance with law.

7. Heard counsel for the parties and perused the evidence on record.

8. Kartik Ram (PW-1) is the Patwari who prepared spot map Ex. P-1. Bisnath (PW-2) has not supported the case of the prosecution and has been declared hostile. Madan Das (PW-3) - the police constable has stated that after completing the entire formalities in the police station the information was given in the office of SDO (P) and obtained the receipt. Vijay Kumar Verma (PW-4) has stated

that at the relevant time he was posted as Reader in the office of SDO (P) and had received the information brought to him by constable Madan Das regarding seizure and arrest of the accused/appellant vide Ex. P-3 and had given receipt to him. Manohar Singh Kanwar (PW-5) has stated that at the relevant time he was posted at police station Palari as *Maalkhana Mohorir* and after receiving one kilogram of *ganja* and cash of Rs. 65/- from Station House Officer (PW-7) he kept the same in the *Maalkhana*. He however has not disclosed as to at what time he did all this. Usatram (PW-6) - the head constable has stated that after giving notice to the accused/appellant he had searched his house and seized one kilogram of *ganja* and Rs. 65/- in cash from there. Thereafter, according to this witness the seized contraband was sealed and the accused/appellant was arrested. T.C. Tatia (PW-7) is the investigating officer who has though supported the case of the prosecution yet he has not stated that any sample was drawn, it was sealed and then sent to the Forensic Science Laboratory for chemical examination. Two witnesses examined by the defence however have not stated anything specific.

9. From the perusal of the evidence of the witnesses and other material collected by the prosecution it is apparent that there is total non-compliance of the mandatory provisions of Section 42 of the NDPS Act as the secret information received by the police people regarding appellant keeping *ganja* in his house was not forwarded to the superior officer, and no satisfaction has been recorded for not obtaining the search warrant. Further, there is no evidence on record to show that the samples so drawn were

homogenized before being sent to the Forensic Science Laboratory for chemical examination. Even the weighment proceedings do not appear to have been completed in accordance with law as no separate weighment *panchnama* is there on record. More importantly, the prosecution has not established the fact that the samples so drawn out of the seized contraband were sent for chemical examination. Though the quantity of the said contraband is said to be one kilogram but there is no separate weighment *panchnama* on record to show as to in what manner the said article was weighed. All this apart, it is the undisputed case of the prosecution that in the house in question 4-5 other family members were also residing at the relevant time and being so it can not be said conclusively that the contraband recovered therefrom was in the exclusive possession of the accused/appellant. The accused/appellant in his statement recorded under Section 313 of the Code of Criminal procedure has categorically stated that at the relevant time he was a student, had come home for celebrating festival and thereby denied his involvement in the crime in question and pin-pointedly expressed his ignorance about his father dealing in *ganja*. Version of the accused/appellant also gets support from the statements of the two defence witnesses who have categorically stated that the accused/appellant was a student and had returned home from Raipur just before the incident. Record also shows that all the members of the family have been roped in the offence alleged and that the accused/appellant has already remained in jail for about 4 years for none of his fault.

10. Thus the overall factual discussion made above goes to show the utter failure of the prosecution in proving its case beyond all reasonable doubt on the basis of which the complicity of the accused in the crime in question could be established in accordance with law. No need to say that its benefit has to go to the accused only. Being all this, the finding recorded by the Court below holding the accused/appellant guilty of the offence under section 20 of the NDPS Act are not based on proper appreciation of the evidence of the witnesses and accordingly the same is liable to be set aside.

11. Appeal is thus allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. Since he is already on bail, no order setting him free etc is required to be passed. Bail bonds so furnished stand discharged.

Sd/-
Pritinker Diwaker
Judge